

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

S.B.CRIMINAL MISC. PETITION NO. 652/2006
(Devkinandan Khatore Vs. The State of Rajasthan)

Date of Order : 23/11/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Dr. S.S.Jodha for the petitioner.
Mr.Ashok Upadhyay, public prosecutor for the State.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 18.10.2005 passed by Chief Judicial Magistrate, Jodhpur (for short 'the trial court' hereinafer) as also seeks quashing of criminal proceeding against the present petitioner for the offence under Section 29 (1) (a) of the Insecticide Act, 1968 (for short 'the Act' hereinafter).

Notice for final disposal is accepted by learned public prosecutor for the State. With the consent of learned counsel for the parties, the petition is heard and decided at the admission stage.

It is contended by learned counsel for the petitioner that the sample of the insecticide was taken from the firm M/s Krishna Agro Sales (for short 'the firm' hereinafter) on 24.8.2000

which was manufactured in the month of July 1999 and the date of expiry was December 2000. The sample on being analyzed by the public analyzer, it was found to be misbranded. The report stating therein that the sample taken has been found to be misbranded dated 25.10.2000, was sent to the firm by letter dated 6.11.2000 requiring the firm to file the reply if any by 14.11.2000. However, by letter dated 20.11.2000, the firm informed the Assistant Director (Agriculture), Jodhpur, the complainant herein, expressing the desire to analyze the sample by the Central Insecticides Laboratory. However, despite request vide letter dated 20.11.2000, the complainant failed to file the complaint before the Court within reasonable time, however, the complaint was filed on 20.12.2000 before the trial court by the Assistant Director (Agriculture), Jodhpur as complainant whereas the expiry date of the sample was December 2000. Even after filing of the complaint, no notice was issued to the petitioner or the firm till 18.4.2001. In compliance of the notice, the petitioner appeared before the trial court on 19.6.2001. However, before notice to the petitioner, the self life of the sample in question had already expired and therefore, the petitioner has been deprived of his valuable right to get the sample of insecticide analyzed by the Central Insecticides Laboratory as envisaged under Section 24 (4) of the Act. Learned counsel for the petitioner submits that on similar facts a

petition filed by co-accused namely M/s Krishi Rasayan Export Pvt. Ltd., Vinay Kumar Churiwal, Atul Churiwal and Rajesh Kumar being S.B.Criminal Misc. Petition No. 245/02 before this Court has been allowed by order dated 22.5.2002 and the proceeding pending in the trial court in Criminal Case No. 124/01 for the offense under Section 29 (1) (a) of the Act has been quashed and the case of the present petitioner is similar and not distinguishable from that of co-accused. Learned counsel has shown me the certificate copy of the order dated 22.5.2002 as also filed photostay copy of the same.

This Court, considering the various decisions cited by the petitioners therein, held that if the accused persons are deprived of their valuable right to get the sample re-tested by the Central Insecticides Laboratory due to delayed filing of the complaint, continuance of criminal proceedings pending against such accused would tantamount to abuse of process of the Court and such proceedings are liable to be quashed.

From the facts stated, it is clear that firstly no report was sent to the present petitioner individually though he at the relevant time was Manager of the Company, and therefore, the sample on being analyzed by the public analyst having found misbranded has not been communicated to the petitioner. Even assuming that such an intimation was sent to the firm and the petitioner being Manager of the firm could be said to have

acquired the knowledge of the sample being found misbranded, the complainant failed to file complaint within reasonable time and almost the complaint was filed at the time when the self life of the sample in question was to expire. Even on filing of the complaint, before the expiry of self life of the sample, no notice was sent to the petitioner. Keeping in view the fact that the proceeding against the similarly situated co-accused has already been quashed by this Court and the case of the present petitioner is not distinguishable from that of other co-accused, in my view, the petitioner has been deprived of his valuable right to get the sample retested by the Central Insecticides Laboratory on account of delayed filing of the complaint and in the meantime, the self life of the sample had already expired and therefore, to secure the ends of justice, the proceeding against the present petitioner also deserves to be quashed.

In view of the aforesaid discussion, the criminal misc. petition filed by petitioner Devkinandan Khatore is allowed. The proceeding pending against the petitioner before the Court of Chief Judicial Magistrate, Jodhpur in Criminal Case No. 124/01 for the offence under Section 29 (1)(a) of the Act stands quashed.

(H.R.PANWAR),J.

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